

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.M. VELASQUEZ-RINCON,  
Petitioner,  
v.  
WARDEN, F.C.I HERLONG,  
Respondent.

No. 2:23-cv-0837 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

On May 10, 2023, petitioner was ordered to file an in forma pauperis affidavit or to pay the appropriate filing fee, within thirty days, and warned that failure to comply would result in a recommendation that his petition be dismissed. The thirty-day period has now expired, and petitioner has not responded to the court's order, has not filed an in forma pauperis affidavit, and has not paid the appropriate filing fee.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district court judge to this case; and

IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to

Magistrate Judge's Findings and Recommendations." In his objections petitioner may address whether a certificate of appealability should issue in the event he files an appeal of the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling;' and (2) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: June 27, 2023

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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